

and available to those projects for which a plan of action involving termination of low income affordability restrictions, through prepayment of the mortgage or termination of the mortgage insurance contract, would not be approvable. The Commissioner shall also provide the owner with any other relevant information which the Commissioner may possess.

(b) *Information to owners extending affordability restrictions.* Within nine months of receipt of a notice of intent to extend the low income affordability restrictions under § 248.153 or to transfer the project under § 248.157, the Commissioner shall provide the owner who submitted the notice with—

(1) A statement of the preservation values of the project as determined under § 248.111;

(2) A statement of the aggregate preservation rents for the project as calculated under § 248.121;

(3) A statement of the applicable Federal cost limit for the market area (or relevant local market, if applicable) in which the project is located, and an explanation of the limitations under § 248.127 on the amount of assistance the Commissioner may provide based on such cost limits;

(4) A statement of whether either of the aggregate preservation rents exceeds the Federal cost limit; and

(5) A direction to file a plan of action and the information necessary to file a plan of action; or

(6) A direction to submit a second notice of intent under § 248.133.

(c) *Information to tenants and State or local governments.* The Commissioner shall provide any information provided to the owner under paragraphs (a) and (b) of this section to the tenant representative, if any, known to the Commissioner, and shall post a notice in each affected building informing tenants of the name(s), address(es), and telephone number(s) of the tenant representative(s) and appropriate personnel in the local HUD field office, from whom they may obtain this information. The Commissioner shall also provide this information to that officer of State or local government to whom the owner submitted a notice of intent pursuant to § 248.105(c). The Commissioner shall include in the information

packet made available to the tenants any other information relating to their rights and opportunities, including—

(1) The potential opportunity of the tenants to become priority purchasers under §§ 248.157 and 248.161; and

(2) The potential opportunity of resident homeownership under §§ 248.173 or 248.175.

§ 248.133 Second notice of intent.

(a) *Filing.* A second notice of intent must be filed by all owners who, after receiving the information provided by the Commissioner in § 248.131, elect to transfer the project under §§ 248.157 or 248.161.

(b) *Timeliness.* A second notice of intent must be submitted not later than 30 days after receipt of the information provided by the Commissioner under § 248.131. If an owner who is required to submit a second notice of intent fails to do so within this time period, the original notice of intent submitted under § 248.105 shall be void and ineffective for purposes of subpart B of this part.

(c) *Filing with the State or local government and tenants.* The owner simultaneously shall file the second notice of intent with that officer of State and local government to whom the owner submitted a notice of intent under § 248.105(c) and with the mortgagee. In addition, the owner shall deliver a copy of the second notice of intent to each tenant representative known to the owner, and if none is known, then to each occupied unit in the project.

§ 248.135 Plans of action.

(a) *Submission.* An owner seeking to terminate the low income affordability restrictions through prepayment of the mortgage or voluntary termination under § 248.141, or to extend the low income affordability restrictions on the project under § 248.153, shall submit a plan of action to the Commissioner in the form and manner prescribed in paragraph (d) or (e) of this section respectively, within 6 months after receipt of the information from the Commissioner under § 248.131.

(b) *Joint Submission.* An owner and purchaser seeking a transfer of the project under §§ 248.157 or 248.161 shall jointly submit a plan of action to the

Commissioner in the form and manner prescribed in paragraph (e) of this section within six months after the owner's acceptance of a bona fide offer under § 248.157 or the purchaser's making of a bona fide offer under § 248.161.

(c) *Filing with the State or local government and tenants.* The owner shall notify the tenants of the plan of action by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available from the tenant representatives, whose names, addresses and telephone numbers are indicated on the summary, the local HUD field office, and the on-site office for the project, or if one is not available, in the location where rents are collected, for inspection and copying, at a reasonable cost, during normal business hours. Simultaneously with the submission to the Commissioner, the owner shall submit the plan of action to that officer of State or local government to whom the owner submitted a notice of intent under § 248.105(c). The Commissioner shall submit a copy of the plan of action to the chief executive officer of the appropriate agency of such State or local government which shall review the plan of action and advise the tenants of the project of any programs that are available to assist the tenants in carrying out the purposes of this subpart. The summary of the plan of action posted by the owner and the copies of the plan of action submitted to the tenant representative, the officer of State or local government to whom the owner submitted a notice of intent under § 248.105(c) and the chief executive officer of the appropriate State or local government, shall all state that, upon request, the tenants and the State or local government, may obtain from the owner or from the local HUD field office a copy of all documentation supporting the plan of action except for that documentation deemed "proprietary information" under § 248.101.

(d) *Termination of affordability restrictions.* If the plan of action proposes to terminate the low income affordability restrictions through prepayment or

voluntary termination in accordance with § 248.141, it shall include:

(1) A description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(2) A description of any proposed changes in the low income affordability restrictions;

(3) A description of any change in ownership that is related to prepayment or voluntary termination;

(4) An assessment of the effect of the proposed changes on existing tenants;

(5) An analysis of the effect of the proposed changes on the supply of housing affordable to low and very low income families or persons in the community within which the project is located and in the area that the housing could reasonably be expected to serve;

(6) A list of any waivers requested by the owner pursuant to § 248.7; and

(7) Any other information that the Commissioner determines is necessary to achieve the purposes of subpart B of this part.

(e) *Extension of affordability restrictions.* If the plan of action proposes to extend the low income affordability restrictions of the project in accordance with § 248.153 or transfer the project to a qualified purchaser in accordance with §§ 248.157 or 248.161, the plan of action shall include:

(1) A description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(2) A description of the Federal incentives requested, including cash flow projections and analyses of how the owner will address any physical or financial deficiencies and maintain the low income affordability restrictions of the project;

(3) A description of any assistance from State or local government agencies, including low income housing tax credits that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(4) A description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale;

(5) An income profile of the tenants as of the date of submission of the plan of action and as of January 1, 1987

(based on the area median income limits established by the Commissioner in February 1987), or if the January 1, 1987 profile is unavailable, a certification from the owner stating its unavailability and a profile as of January 1, 1988, or, if that is also unavailable, a profile as of January 1, 1989;

(6) A transfer of physical assets package, if a transfer is proposed;

(7) A list of any waivers requested by the owner pursuant to § 248.7; and

(8) Any other information that the Commissioner determines is necessary to achieve the purposes of subpart B of this part.

(f) *Revisions.* The owner or owner and purchaser may from time to time revise and amend the plan of action as may be necessary to obtain approval under subpart B of this part and must amend the plan of action no later than 30 days after a change in any of the information required in paragraphs (d) or (e) of this section. The owner shall submit any revision to the Commissioner, and provide a copy of the revision and all documentation supporting the revision except for that documentation deemed "proprietary information" under § 248.101, to the parties, and in the manner, specified in paragraph (c) of this section.

(g) *Failure to Submit.* If the owner fails to submit a plan of action to the Commissioner, when prepayment or termination is sought, within the 6 month period set forth in paragraph (a) of this section or, when a transfer is sought, if the owner and purchaser fail to submit a plan of action within the 6 month time period set forth in paragraph (b) of this section, the notice of intent filed by the owner under § 248.105 shall be ineffective for the purposes of subpart B of this part and the owner shall be barred from submitting another notice of intent under § 248.105 until 6 months after expiration of such period.

(h) *Comment Period for tenants and State or local governments.* Upon submission of the plan of action by the owner, the tenants of the affected project and the State or local government shall have 60 days in which to provide comments on the plan of action to the Commissioner or to the owner, who will then submit the comments to the

Commissioner. The Commissioner shall not approve a plan of action under subpart B of this part before the end of this 60-day period and all comments received during this period will be considered by the Commissioner in making its determination to approve or disapprove a plan of action.

(i) *Notification to tenants and the State or local government of plan of action approval.* Upon the Commissioner's approval of the plan of action, the owner shall notify tenants of the terms thereof by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available for inspection and copying during reasonable hours in a location convenient to the tenants.

[57 FR 12041, Apr. 8, 1992, as amended at 58 FR 37814, July 13, 1993]

§ 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.

(a) *Approval.* The Commissioner may approve a plan of action that provides for the termination of the low income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) Implementation of the plan of action will not—

(i) Materially increase economic hardship for current tenants, and will not in any event result in a monthly rental payment by any current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower); or in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower); or

(ii) Involuntarily displace current tenants (except for good cause) where comparable and affordable housing is